

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

United States of America,

Plaintiff

v.

Stephon James Whitney,

Defendant

Case No.: 2:21-cr-00002-JAD-NJK

**Order Denying Motion to Reduce Sentence**

[ECF Nos. 71, 75]

Stephon James Whitney is serving a 54-month sentence for being a felon in possession of a firearm. Whitney has filed two motions—a “motion for reconsideration on sentence reduction” and a motion for a sentence reduction—both based on recent changes to the sentencing guidelines known commonly as Amendment 821, which authorizes the removal of extra criminal-history points known as “status points.” His appointed attorney has filed a notice explaining that Whitney does not qualify for a sentence reduction because, even with one less status point, his criminal-history category remains the same. Because I find that Whitney is not eligible for a sentence reduction based on Amendment 821, I deny his motions.

**Discussion**

The Sentencing Commission submitted criminal-history amendments to Congress in May 2023, they took effect in November 2023, and courts have been applying them retroactively since February 2024.<sup>1</sup> Whitney argues that he is entitled to a sentence reduction under the change added to the guidelines as § 4A1.1, which reduces the impact of “status points” on a sentence. Status points are additional criminal-history points applied to a defendant who

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<sup>1</sup> Sent’g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60534 (Sept. 1, 2023).

1 committed his crime of conviction while under another criminal-justice sentence. Because the  
2 Commission found that status points are less reliable indicators of rearrest, these changes allow  
3 courts to depend less on status points to determine criminal history.<sup>2</sup> A defendant with seven or  
4 more criminal-history points may receive a one-point reduction in his status points, while a  
5 defendant with six or fewer criminal-history points may have his status points eliminated for  
6 committing his offenses while under a criminal-justice sentence.<sup>3</sup> A court may reduce a  
7 defendant's sentence based on this amendment if his "term of imprisonment [was] based on a  
8 sentencing range that has subsequently been lowered by the Sentencing Commission [under] 28  
9 U.S.C. § 994(o) . . . after considering the factors set forth in section 3553(a) . . . if such a  
10 reduction is consistent with applicable policy statements issued by the Sentencing  
11 Commission."<sup>4</sup>

12 Whitney contends that he is eligible for a sentence reduction based on this amendment,  
13 having received a letter from the Office of the Federal Public Defender for the District of Nevada  
14 that his criminal-history points had been reduced.<sup>5</sup> But as his appointed counsel acknowledges  
15 in a subsequent filing, Whitney doesn't qualify for this reduction because a reduction in his  
16 status points would not change his criminal-history category.<sup>6</sup> Whitney received two status  
17 points at the time of sentencing, which resulted in a total of 11 criminal-history points, placing  
18 him in criminal-history category V, the category assigned to individuals with 10–12 criminal-

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20 <sup>2</sup> See U.S. Sent'g Comm'n, Revisiting Status Points (2022),  
21 [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220628_Status.pdf)  
22 [publications/2022/20220628\\_Status.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220628_Status.pdf).

23 <sup>3</sup> Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60535 (Sept. 1, 2023).

<sup>4</sup> 18 U.S.C. § 3582(c)(2) (cleaned up).


<sup>5</sup> ECF No. 71, ECF No. 75 at 3.

<sup>6</sup> ECF No. 76 at 1.

1 history points.<sup>7</sup> One of his status points was already removed under Amendment 821, leaving  
2 Whitney with 10 criminal-history points. That reduction did not change his criminal-history  
3 category, which remains at V. Because the removal of a status point does not change his  
4 criminal history category, this change would also not result in a lower sentencing guideline  
5 range. So Whitney is not entitled to a sentence reduction.

### 6 **Conclusion**

7 Because Stephon James Whitney does not qualify for a sentence reduction under  
8 Amendment 821, IT IS THEREFORE ORDERED that his motions for a sentence reduction  
9 under Amendment 821 [ECF Nos. 71, 75] are **DENIED**.

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14 U.S. District Judge Jennifer A. Dorsey  
15 October 29, 2024  
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<sup>7</sup> See USSG ch. 5, pt. A, Sentencing Table.